HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1331 (S/S) year 2003

Smt. Madhawi Devi

Versus

State of Uttaranchal and another

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 03.11.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
WRIT PETITION NO. 1331(S/S) OF 2003.

CIVIL SIDE:

Smt. Madhawi Devi. ….. Petitioner.

Versus

State of Uttaranchal & another. ….. Respondents.

HON'BLE RAJESH TANDON- J:

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus by commanding the respondents to give the petitioner employment in place of deceased husband Rajendra Ram who was working in Class IV.

Brief facts are that the husband of the petitioner, namely, Rajendra Ram was a class IV employee in Tehsil and district Bageshwarm. He was working with the Revenue Department of the respondents under Qanungo at Kapkote.

In paragraph 3 of the writ petition it has been stated that on 25th of May,2002 the Hon'ble Chief Minister Sri Bhagar Singh Koshyari was scheduled to visit Kapkote area and the husband of the petitioner alongwith other officials was posted on Chief Minister's duty in that area. From the facts as disclosed in the writ petition it will appear that on 25th May, 2002 while the husband of the petitioner was traveling in the Jeep on duty, the said Jeep met with an accident near Sunaibarh within tehsil and district Bageshwar and Sri Rajendra Ram died in the said accident.

The counsel for the petitioner has stated that at the time of death Rajendra Ram left the following legal heirs:

1. The petitioner herself as wife of the deceased.
2. Sri Shiv Lal aged 13 years, son of the deceased.
3. Sri Suraj Lal aged 9 years, son of the deceased.
4. Km. Punam, aged 7 years, daughter of the deceased.
5. Sri Dhiraj aged 3 years, son of the deceased.
6. Parents of the deceased, i.e. mother-in-law and father-in-law of petitioner.

It is a case where after the death of the head of the family there is no

earning member in the family and there is no support to the petitioner from any corner.

Counsel for the petitioner has stated that she has applied for employment in place of her husband under the Dying and Harness Rules on 7th of April, 2003. Thereafter the petitioner has made a representation on 22.07.2003 and 01.09.2003 which were duly received in the officer of the respondent No.2 but till today the application of the petitioner has not been considered.

As will appear from the U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules,1974, the petitioner having applied under Rule 2, according to the petitioner she being fully covered under the said Rule, respondent No.2 should have passed the order for appointment of the petitioner without any delay.

Rule 2 of the U.P. Recruitment Of Dependants Of Government Servants Dying In Harness Rules, 1974 provides as under:

"2. Definition- In these rules, unless the context otherwise requires

(a) "Government servant" means a Government servant employed in connection with the affairs of Uttar Pradesh who-

(i) Was permanent is such employment, or

(ii) through temporary had been regularly appointed in such employment ,or

(iii) though not regularly appointed, had put in three years' continuous service in regular vacancy in such employment.

Explanation- "Regularly appointed" means appointed in accordance with the procedure laid down for recruitment to the post of service, as the case may be;

(b) "deceased Government servant" means a Government servant who dies while in service;

(c) *"family" shall include the following relations of the deceased Government servant;*

(i) Wife or husband;

(ii) Sons;

(iii) Unmarried and widowed daughters;

(iv) If the deceazsed was unmarried Government servant, brother,unmarried sister and widowed mother dependant on the deceased Government servant.

(v) "Head of Office" means Head of Office in which the deceased Government servant was servant prior to his death.

Rule 5 of the aforesaid Rules provides as under:

"5. Recruitment of a member of the family of the deceased

In case of Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service4 on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person –

(i) Fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant.

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes under hardship in any particular case, it may dispense with or relax the recruitment as it may consider necessary for dealing with the case in a just and equitable manner".

The Apex Court from time to time has laid down the law regarding compassionate appointment, i.e. Dying in Harness Rules. In 1997 Vol. 11 S.C.C. page 390 Managing Director, MMTC Ltd, New Delhi and another Vs Pramoda Dei it has been held as under:

" As pointed out by this court, the object of compassionate appointment is to e4nable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitled his family to compassionate appointment. Ineligibility, incapacity or unsuitability of the person seeking employment are no doubt relevant

considerations but they cannot be regarded as exhaustive. There may be other circumstances which may be relevant and can be taken into account by the competent authority for considering whether rehabilitation appointment should be given under Rule 18 of the Rules".

In 1998 (5) SCC 192 Director of Education and another Vs Pushpendra Kumar and others the Hon'ble Apex Court observed as under:

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullity the main provision by taking away completely the right conferred by the main provision. Case, has therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provisions enabling appointment being made on compassionate grounds of the dependant of a deceased employee".

The Standing counsel for the State of Uttaranchal has very fairly conceded that the orders will be passed with regard to compassionate appointment of the petitioner in accordance with the aforesaid rules and orders considering the representation submitted by the petitioner.

The respondents shall consider the claim of the petitioner for compassionate appointment considering the object of the rules regarding the death of the ‘bread earner’ in the family as well as to enable the family of the deceased employee to tide over the sudden crisis which has left the family in penury and without means of livelihood.

The respondents are directed to consider the application of the petitioner for compassionate appointment in the light of the observations made aforesaid within a period of three weeks after obtaining certified copy of the order.

With the above observations the writ petition is disposed of accordingly. There will be not order as to costs.

(Rajesh Tandon, J.)

Dated: November 03,2003.
Negi.